

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
)	
Federal-State Joint Board on)	
Universal Service)	CC Docket No. 96-45
)	
Bluegrass Wireless LLC,)	
Kentucky RSA #3 Cellular General)	
Partnership, Kentucky RSA #4 Cellular)	
General Partnership, and Cumberland)	
Cellular Partnership)	
)	
Petition for Commission Agreement in)	
Redefining the Service Areas of Rural)	
Telephone Companies in the)	
Commonwealth of Kentucky Pursuant)	
To 47 C.F.R. Section 54.207(c))	

**PETITION FOR COMMISSION AGREEMENT IN REDEFINING THE
SERVICE AREAS OF RURAL TELEPHONE COMPANIES IN KENTUCKY**

David A. LaFuria
Steven M. Chernoff
Lukas Nace Gutierrez & Sachs, Chartered
1650 Tysons Boulevard
Suite 1500
McLean, VA 22102

Attorneys for: BLUEGRASS WIRELESS LLC
KENTUCKY RSA #3 CELLULAR GENERAL PARTNERSHIP
KENTUCKY RSA #4 CELLULAR GENERAL PARTNERSHIP
CUMBERLAND CELLULAR PARTNERSHIP

November 10, 2005

TABLE OF CONTENTS

I. BACKGROUND.....	2
II. DISCUSSION	4
A. The Requested Redefinition Is Consistent With Federal Universal Service Policy.....	4
B. The Requested Redefinition Satisfies the Three Joint Board Factors Under Section 214(e)(5) of the Act	8
C. The Proposed Redefinition Along Wire-Center Boundaries Is Consistent With the FCC’s “Minimum Geographic Area” Policy	12
III. CONCLUSION	12

Summary

Bluegrass Wireless LLC, Kentucky RSA #3 Cellular General Partnership, Kentucky RSA #4 Cellular General Partnership, and Cumberland Cellular Partnership (collectively, “Bluegrass Cellular”) requests the Commission’s concurrence with the proposal by the Kentucky Public Service Commission (“KPSC”) to redefine the service areas of ALLTEL Kentucky, Inc. and Kentucky ALLTEL, Inc. - London, pursuant to the process set forth in Section 54.207(c) of the Commission’s rules.

Bluegrass consists of four general partnerships providing digital cellular service in rural areas of Kentucky. The KPSC recently designated Bluegrass Cellular as an eligible telecommunications carrier (“ETC”) pursuant to Section 214(e) of the Act. By granting ETC status to Bluegrass Cellular, the KPSC found that the use of federal high-cost support to develop its competitive operations would serve the public interest. Because Bluegrass Cellular’s FCC-licensed service territory does not correlate with rural incumbent local exchange carrier (“ILEC”) service areas, the Act provides that the affected rural ILEC service areas must be redefined before designation in certain areas can take effect. Accordingly, the KPSC has proposed that each partially-covered rural ILEC service area should be redefined in a manner that permits Bluegrass Cellular’s designation to become effective throughout the portions of the ILEC service area in which it is licensed to provide service. Consistent with the KPSC’s order and with previous actions taken by the FCC and several other states, redefinition is requested such that each wire center of the affected ILECs is reclassified as a separate service area.

The proposed redefinition is warranted under the Commission’s competitively neutral universal service policies, and it constitutes precisely the same relief granted to similarly situated carriers by the Commission and several states. Unless the relevant ILEC service areas are

redefined, Bluegrass Cellular will be unable to use high-cost support to improve and expand service to consumers in many areas of its licensed service territories and consumers will be denied the benefits. As the Commission and several states have consistently held, competitive and technological neutrality demand the removal of these artificial barriers to competitive entry. Moreover, the requested redefinition satisfies the analysis provided by the Federal-State Joint Board on Universal Service (“Joint Board”) in that it eliminates the payment of uneconomic support or cream-skimming opportunities, duly recognizes the special status of rural carriers under the Act, and does not impose undue administrative burdens on ILECs.

The KPSC’s proposed redefinition is well-supported by the record at the state level, and all affected parties were provided ample opportunity to ensure that the Joint Board’s recommendations were taken into account. Accordingly, Bluegrass Cellular requests that the Commission grant its concurrence expeditiously and allow the proposed redefinition to become effective without further action.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	
Universal Service)	CC Docket No. 96-45
)	
Bluegrass Wireless LLC,)	
Kentucky RSA #3 Cellular General)	
Partnership, Kentucky RSA #4 Cellular)	
General Partnership, and Cumberland)	
Cellular Partnership)	
)	
Petition for Commission Agreement in)	
Redefining the Service Areas of Rural)	
Telephone Companies in the)	
Commonwealth of Kentucky Pursuant)	
To 47 C.F.R. Section 54.207(c))	

**PETITION FOR COMMISSION AGREEMENT IN REDEFINING THE
SERVICE AREAS OF RURAL TELEPHONE COMPANIES IN KENTUCKY**

Bluegrass Wireless LLC, Kentucky RSA #3 Cellular General Partnership, Kentucky RSA #4 Cellular General Partnership, and Cumberland Cellular Partnership (collectively, “Bluegrass Cellular”), hereby submit this Petition seeking the FCC’s agreement with the decision of the Kentucky Public Service Commission (“KPSC”) to redefine the service areas of ALLTEL Kentucky, Inc. and Kentucky ALLTEL, Inc. – London, incumbent local exchange carriers (“ILECs”) doing business in Kentucky, so that each of the ILECs’ wire centers constitutes a separate service area. Bluegrass Cellular provides digital cellular telephone service to consumers

through its licensed operating entities in the Kentucky Rural Service Area (“RSA”) 3 – Meade, Kentucky; RSA 4 – Spencer, Kentucky; and RSA 5 – Barren, Kentucky. Bluegrass Cellular was recently granted eligible telecommunications carrier (“ETC”) status by the KPSC pursuant to Section 214(e)(2) of the Communications Act of 1934, as amended (the “Act”).¹ As set forth below, classifying each individual wire center of the affected ILECs as a separate service area will foster federal and state goals of encouraging competition in the telecommunications marketplace and extending universal service to rural Kentucky’s consumers.

I. BACKGROUND

Pursuant to Section 214(e) of the Communications Act of 1934, as amended (the “Act”), state commissions generally have authority to designate carriers that satisfy the requirements of the federal universal service rules as ETCs and to define their service areas.² In rural areas, service areas are generally defined as the ILEC’s study area. However, the Act explicitly sets forth a process whereby a competitive ETC may be designated for a service area that differs from that of the ILEC. Specifically, Section 214(e) of the Act provides:

... “service area” means such company’s “study area” unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under Section 410(c), establish a different definition of service area for such company.³

The FCC and the Federal-State Joint Board on Universal Service (“Joint Board”) have recognized that a strict rule requiring a competitive ETC to serve an area exactly matching a rural LEC’s study area would preclude competitive carriers that fully satisfy ETC requirements

¹ Bluegrass Wireless LLC, Kentucky RSA #4 Cellular General Partnership, Kentucky RSA #3 Cellular General Partnership, and Cumberland Cellular Partnership, Case Nos. 2005-00017, 2005-00018, 2005-00019, 2005-00020, Order (rel. July 8, 2005) (“ETC Order”). A copy of the ETC Order is attached as Appendix B

² 47 U.S.C. § 214(e).

³ *Id.*

from bringing the benefits of competition to consumers throughout their service territory.⁴ Therefore, the FCC established a streamlined procedure for the FCC and states to act together to redefine rural ILEC service areas.⁵ Using this procedure, the FCC and state commissions have applied the analysis contained in Section 214(e) and concluded that it is necessary and appropriate to redefine the LEC service areas along wire center boundaries to permit the designation of competitive ETCs in those areas.⁶ This process, as well as the underlying necessity of redefinition, was reaffirmed in the FCC's *ETC Report and Order* released March 17, 2005.⁷

Bluegrass Cellular petitioned the KPSC for ETC status for purposes of receiving high-cost support from the federal universal service fund. The KPSC granted Bluegrass Cellular's petition on July 8, 2005, concluding that a grant of ETC status to each of the companies was in the public interest.⁸ The KPSC also provided for the redefinition of the affected rural ILECs' service areas, conditioning ETC status in rural ILEC areas that are only partially covered by Bluegrass Cellular's proposed ETC service areas on FCC concurrence with the redefinition of those rural ILEC service areas pursuant to the process established under Section 54.207(c) of the

⁴ See *Petition for Agreement with Designation of Rural Company Eligible Telecommunications Carrier Service Areas and for Approval of the Use of Disaggregation of Study Areas for the Purpose of Distributing Portable Federal Universal Service Support*, Memorandum Opinion and Order, 15 FCC Rcd 9924, 9927 n. 40 (1999) ("Washington Redefinition Order"), citing *Federal-State Joint Board on Universal Service, Recommended Decision*, 12 FCC Rcd 87, 181 (1996) ("Joint Board Recommended Decision").

⁵ See 47 C.F.R. § 54.207(c) See also *Federal-State Joint Board on Universal Service, Report and Order*, 12 FCC Rcd 8776, 8881 (1997) ("First Report and Order").

⁶ See, e.g., *Public Notice, Smith Bagley, Inc. Petitions for Agreement to Redefine the Service Areas of Navajo Communications Company, Citizens Communications Company of the White Mountains, and CenturyTel of the Southwest, Inc. On Tribal Lands Within the State of Arizona*, DA 01-409 (rel. Feb. 15, 2002) (effective date May 16, 2002); *Washington Redefinition Order, supra*, 15 FCC Rcd at 9927-28.

⁷ *Federal-State Joint Board on Universal Service, Report & Order*, 20 FCC Rcd 6371 (2005) ("ETC Report and Order").

⁸ A copy of the KPSC Order is attached hereto as Appendix B for the Commission's reference.

Act. 47 C.F.R. § 54.207(c). The KPSC directed Bluegrass Cellular to petition the FCC for concurrence with the redefinition of the affected ILEC service areas.⁹ A list of the rural ILEC wire centers for which redefinition is proposed is attached as Appendix A.

II. DISCUSSION

The KPSC's proposal to redefine rural ILEC service areas is consistent with FCC rules, the recommendations of the Joint Board, and the competitively neutral universal service policies embedded in the Act. Specifically, redefining the affected rural ILEC service areas so that each wire center is a separate service area will promote competition and the ability of rural consumers to have similar choices among telecommunications services and at rates that are comparable to those available in urban areas.¹⁰ The proceedings at the state level provided all affected parties with an opportunity to comment on the proposed redefinition. The ETC Order and the facts set forth below demonstrate that the requested redefinition fully comports with federal requirements and provides the FCC with ample justification to concur.

A. The Requested Redefinition Is Consistent With Federal Universal Service Policy.

Congress, in passing the 1996 amendments to the Act, declared its intent to “promote competition and reduce regulation” and to “encourage the rapid deployment of new telecommunications technologies.”¹¹ As part of its effort to further these pro-competitive goals, Congress enacted new universal service provisions that, for the first time, envision multiple ETCs in the same market.¹² In furtherance of this statutory mandate, the FCC has adopted the

⁹ *Id.* at p. 6.

¹⁰ *See* 47 U.S.C. § 254(b)(3).

¹¹ Pub. L. No. 104-104, 110 Stat. 56 (1996) (preamble).

¹² *See* 47 U.S.C. § 214(e)(2).

principle that universal service mechanisms be administered in a competitively neutral manner, meaning that no particular type of carrier or technology should be unfairly advantaged or disadvantaged.¹³

Consistent with this policy, the FCC and many state commissions have affirmed that ETC service areas should be defined in a manner that removes obstacles to competitive entry.¹⁴ In 2002, for example, the FCC granted a petition of the Colorado Public Utilities Commission (“CPUC”) for a service area redefinition identical in all material respects to the redefinition proposed in this Petition.¹⁵ In support of redefining CenturyTel’s service area along wire-center boundaries, the CPUC emphasized that “in CenturyTel’s service area, no company could receive a designation as a competitive ETC unless it is able to provide service in 53 separate, non-contiguous wire centers located across the entirety of Colorado . . . [T]his constitutes a significant barrier to entry.”¹⁶ The FCC agreed and, by declining to open a proceeding, allowed the requested redefinition to take effect.¹⁷ The FCC similarly approved a petition by the Washington Utilities and Transportation Commission (“WUTC”) and about 20 rural ILECs for the redefinition of the ILECs’ service areas along wire center boundaries, finding that:

¹³ See *First Report and Order*, *supra*, 12 FCC Rcd at 8801. Competitive neutrality is a “fundamental principle” of the FCC’s universal service policies. *Guam Cellular and Paging, Inc. Petition for Waiver of Section 54.314 of the Commission’s Rules and Regulations*, CC Docket No. 96-45, DA 03-1169 at ¶ 7 (Tel. Acc. Pol. Div. rel. April 17, 2003). Moreover, competitive neutrality was not among the issues referred by the FCC to the Joint Board. See *Federal-State Joint Board on Universal Service*, FCC 02-307 (rel. Nov. 7, 2002) (“*Referral Order*”).

¹⁴ See, e.g., *First Report and Order*, *supra*, 12 FCC Rcd at 8880-81; Petition by the Public Utilities Commission of the State of Colorado to Redefine the Service Area of CenturyTel of Eagle, Inc., Pursuant to 47 C.F.R. § 54.207(c) at p. 4 (filed with the FCC Aug. 1, 2002) (“CPUC Petition”).

¹⁵ See CPUC Petition at p. 5 (“Petitioner requests agreement to redefine CenturyTel’s service area to the wire center level”).

¹⁶ CPUC Petition at p. 4.

¹⁷ CenturyTel has petitioned the FCC to reconsider its decision. However, as of this date CenturyTel’s service area redefinition is effective.

[O]ur concurrence with rural ILEC petitioners' request for designation of their individual exchanges as service areas is warranted in order to promote competition. The Washington Commission is particularly concerned that rural areas . . . are not left behind in the move to greater competition. Petitioners also state that designating eligible telecommunications carriers at the exchange level, rather than at the study area level, will promote competitive entry by permitting new entrants to provide service in relatively small areas . . . We conclude that this effort to facilitate local competition justifies our concurrence with the proposed service area redefinition.¹⁸

In Washington, several competitive ETCs have been designated in various service areas without any apparent adverse consequences to date. No ILEC in Washington has ever introduced any evidence that they, or consumers, have been harmed by the WUTC's service area redefinition.¹⁹

Other state commissions have similarly concluded that redefining rural ILEC service areas along wire center boundaries is fully justified by the pro-competitive goals of the 1996 Act. For example, the Minnesota Public Utilities Commission ("MPUC") approved the proposal by WWC Holding Co., Inc. d/b/a CellularOne to redefine certain rural ILEC service areas to the wire center level.²⁰ Addressing the concerns expressed by ILEC commenters, the MPUC concluded that the proposed redefinition would neither harm the affected rural ILECs nor create significant cream-skimming opportunities.²¹ The FCC agreed, and allowed the proposed

¹⁸ *Washington Redefinition Order, supra*, 15 FCC Rcd at 9927-28 (footnotes omitted).

¹⁹ Sprint Corp. d/b/a Sprint PCS et al., Docket No. UT-043120 at p. 11 (Wash. Util. & Transp. Commn., Jan. 13, 2005) (stating that the WUTC's designation of multiple competitive ETCs, "if not benefiting customers (which it does), certainly is not failing customers. In the five years since we first designated an additional ETC in areas served by rural telephone companies, the Commission has received only two customer complaints in which the consumers alleged that a *non*-rural, wireline ETC was not providing service. No Rural ILEC has requested an increase in revenue requirements based on need occasioned by competition from wireless or other ETCs. This record supports our practice of not seeking commitments or adding requirements as part of the ETC designation process.").

²⁰ WWC Holding Co., Inc. d/b/a CellularOne, MPUC Docket No. P-5695/M-04-226, Order Approving ETC Designation (Minn. PUC, Aug. 19, 2004) (FCC concurrence granted Dec. 28, 2004).

²¹ *Id.* at p. 9.

redefinition to enter into effect. Similar conclusions were reached by state regulators in Arizona, Colorado, New Mexico, Kansas, Maine, Michigan, North Dakota, Oregon, and West Virginia.²²

As in those cases, the redefinition requested in the instant proceeding will enable Bluegrass Cellular to make the network investments necessary to bring competitive service to people throughout its licensed service areas. Redefinition will therefore benefit Kentucky's rural consumers, who will begin to see a variety in pricing packages and service options on par with those available in urban and suburban areas.²³ They will see infrastructure investment in areas formerly controlled solely by ILECs, which will bring improved wireless service and important health and safety benefits associated with increased levels of radiofrequency coverage.²⁴ Redefinition will also remove a major obstacle to competition, consistent with federal telecommunications policy.²⁵

²² See NPI-Omnipoint Wireless, LLC, Case No. U-13714 (Mich. PSC, Aug. 26, 2003) (FCC concurrence granted Feb. 1, 2005) ("NPI-Omnipoint Order"); Highland Cellular, Inc., Case No. 02-1453-T-PC, Recommended Decision (W.V. PSC Sept. 15, 2003), *aff'd* by Final Order Aug. 27, 2004 (FCC concurrence granted Jan. 24, 2005) ("Highland W.V. Order"); Cellular Mobile Systems of St. Cloud, Docket No. PT6201/M-03-1618 (Minn. PUC, May 16, 2004) (FCC concurrence granted Oct. 7, 2004) ("CMS Minnesota Order"); United States Cellular Corp., Docket 1084 (Oregon PUC, June 24, 2004) (FCC concurrence granted Oct. 11, 2004) ("USCC Oregon Order"); Smith Bagley, Inc., Docket No. T-02556A-99-0207 (Ariz. Corp. Comm'n Dec. 15, 2000) (FCC concurrence granted May 16 and July 1, 2001) ("SBI Arizona Order"); Smith Bagley, Inc., Utility Case No. 3026, Recommended Decision of the Hearing Examiner and Certification of Stipulation (N.M. Pub. Reg. Comm'n Aug. 14, 2001, adopted by Final Order (Feb. 19, 2002) (FCC concurrence granted June 11, 2002) ("SBI N.M. Order"); RCC Minnesota, Inc., Docket No. 04-RCCT-338-ETC (Kansas Corp. Comm'n, Sept. 30, 2004) (FCC concurrence pending) ("RCC Kansas Order"); RCC Minnesota, Inc. et al., Docket No. 2002-344 (Maine PUC May 13, 2003) (FCC concurrence granted March 17, 2005) ("RCC Maine Order"); Northwest Dakota Cellular of North Dakota Limited Partnership d/b/a Verizon Wireless et al., Case No. PU-1226-03-597 et al. (N.D. PSC, Feb. 25, 2004) (FCC concurrence pending) ("Northwest Dakota Order"); In the Matter of the Application of N.E. Colorado Cellular, Inc., to Re-define the Service Area of Eastern Slope Rural Telephone Association, Inc.; Great Plains Communications, Inc.; Plains Cooperative Telephone Association, Inc.; and Sunflower Telephone Co., Inc., Docket No. 02A-444T (ALJ, May 23, 2003), *aff'd* by Colo. PUC Oct. 2, 2003 (FCC concurrence pending) ("Colorado Redefinition Order")

²³ See 47 U.S.C. § 254(b)(3).

²⁴ See KPSC Order at p. 5.

²⁵ See Joint Explanatory Statement of the Committee of Conference, H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess. at 113 (stating that the 1996 Act was designed to create "a pro-competitive, de-regulatory national policy framework" aimed at fostering rapid deployment of telecommunications services to all Americans "by opening *all telecommunications markets* to competition ...")(emphasis added).

B. The Requested Redefinition Satisfies the Three Joint Board Factors Under Section 54.207(c)(1) of the Commission's Rules.

A petition to redefine an ILEC's service area must contain "an analysis that takes into account the recommendations of any Federal-State Joint Board convened to provide recommendations with respect to the definition of a service area served by a rural telephone company."²⁶ In the *Recommended Decision* that laid the foundation for the FCC's *First Report and Order*, the Joint Board enumerated three factors to be considered when reviewing a request to redefine a LEC's service area.²⁷

First, the Joint Board expressed concern as to whether the competitive carrier is attempting to "cream skim" by only proposing to serve the lowest cost exchanges.²⁸ As a wireless carrier, Bluegrass Cellular is restricted to providing service in those areas where it is licensed by the FCC. Bluegrass Cellular is not picking and choosing the lowest-cost exchanges; on the contrary, the KPSC designated Bluegrass Cellular for an ETC service area that is based on the geographic limitations of its licensed service territory,²⁹ and the KPSC made the affirmative finding that Bluegrass Cellular will offer service to customers in areas where they may not have access to wireline service.³⁰ Bluegrass Cellular has not attempted to select areas to enter based on support levels.

²⁶ 47 C.F.R. § 54.207(c)(1).

²⁷ *Joint Board Recommended Decision, supra*

²⁸ *See Joint Board Recommended Decision*, 12 FCC Rcd at 180.

²⁹ *See KPSC Order* at p. 6.

³⁰ *See id.* at p. 5.

Opportunities for receiving uneconomic levels of support are further diminished by the FCC's decision to allow rural ILECs to disaggregate support below the study-area level.³¹ By moving support away from low-cost areas and into high-cost areas, ILECs have had the ability to minimize or eliminate cream-skimming and the payment of uneconomic support to competitors.³² Furthermore, any ILECs that failed to disaggregate support effectively may modify their disaggregation filings subject to state approval.³³

Bluegrass Cellular's Petition also makes clear that it meets the FCC's criteria in its analysis of population density as a means of determining the likelihood of Bluegrass Cellular receiving uneconomic levels of support. As indicated in the table attached as Appendix C, Bluegrass Cellular is not proposing to serve only, or even primarily, the more densely populated rural ILEC wire centers.

- ALLTEL Kentucky, Inc. ("ALLTEL"). ALLTEL has disaggregated support below the study area level so that support is more accurately matched with the cost of serving customers in higher- or lower-cost portions of its study area. Accordingly, the risk of cream-skimming is minimized, if not eliminated altogether. Even if ALLTEL's support were not disaggregated, cream-skimming would not be a concern because Bluegrass Cellular is proposing to serve the higher-cost portions of ALLTEL's study area. The population density of the Sheperdsville wire center – the

³¹ See *Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Fourteenth Report and Order, twenty-second Order on Reconsideration, and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 11244, 11302-09 (2001) ("*Fourteenth Report and Order*")

³² See *ETC Report and Order*, *supra*, 20 FCC Rcd at 6393-94. See also *Federal-State Joint Board on Universal Service, Western Wireless Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota, Memorandum Opinion and Order*, 16 FCC Rcd 18133, 18141 (2001)

³³ See 47 C.F.R. §§ 54.315(b)(4); 54.315(c)(5), 54.315(d)(5)

only ALLTEL wire center within Bluegrass Cellular's proposed ETC service area – is 110.32 persons per square mile (“psm”), while the population density for the ALLTEL wire centers outside of Bluegrass Cellular's proposed ETC service area is 456.10 psm. Because Bluegrass Cellular is proposing to serve by far the less densely populated, higher-cost portions of ALLTEL's study area, there is no risk that cream-skimming will result here.

- Kentucky ALLTEL, Inc. – London (“ALLTEL – London”). The average population density of the ALLTEL – London wire centers Bluegrass Cellular proposes to cover is 46.65 psm, while the average population density of the remaining wire centers in that study area is 46.35. The difference between these two population densities is so small as to be insignificant for purposes of this analysis.³⁴ Moreover, only 28.24% of Bluegrass Cellular's potential customers in ALLTEL – London's service area live in the highest-density wire center within its proposed ETC service area, in contrast to the 94% figure that led to partial denial in the FCC's *Highland Cellular* order.³⁵

In sum, Bluegrass Cellular is not proposing to serve “only the low-cost, high revenue customers in a rural telephone company's study area.”³⁶ This fact, in conjunction with the fact that one of the affected ILECs has disaggregated high-cost support and the other may do so if it

³⁴ See *Virginia Cellular, LLC*, 19 FCC Rcd 1563, 1579 and n.110 (2004) (“*Virginia Cellular*”) (“The average population density for the MGW wire centers for which Virginia Cellular seeks ETC designation is approximately 2.30 persons per square mile and the average population density for MGW's remaining wire centers is approximately 2.18 persons per square mile. . . . Although the average population density of the MGW wire centers which Virginia Cellular proposes to serve is slightly higher than the average population density of MGW's remaining wire centers, the amount of this difference is not significant enough to raise cream skimming concerns ”)

³⁵ See *Highland Cellular, Inc.*, 19 FCC Rcd 6422, 6436-37 (2004) (“*Highland Cellular*”).

³⁶ See *Virginia Cellular*, *supra*, 19 FCC Rcd at 1578.

sees the need to protect itself from cream-skimming, demonstrates that cream-skimming will not result from a grant of this Petition.

Second, the Joint Board recommended that the FCC and the States consider the rural carrier's special status under the 1996 Act.³⁷ In reviewing Bluegrass Cellular's Petition, the KPSC weighed numerous factors in ultimately determining that such designation was in the public interest. Congress mandated this public-interest analysis in order to protect the special status of rural carriers in the same way it established special considerations for rural carriers with regard to interconnection, unbundling, and resale requirements.³⁸ No action in this proceeding will affect or prejudice any future action the KPSC or the FCC may take with respect to any ILEC's status as a rural telephone company, and nothing about service area redefinition will diminish an ILEC's status as such.

Third, the Joint Board recommended that the FCC and the States consider the administrative burden a rural ILEC would face.³⁹ In the instant case, Bluegrass Cellular's request to redefine the affected rural ILECs' service areas along wire center boundaries is made solely for ETC designation purposes. Defining the service area in this manner will in no way impact the way the affected rural ILECs calculate their costs, but is solely to enable Bluegrass Cellular to begin receiving high-cost support in those areas in the same manner as the ILECs. Rural ILECs may continue to calculate costs and submit data for purposes of collecting high-cost support in the same manner as they do now.

Should ALLTEL – London choose to disaggregate support out of concerns about cream-skimming by Bluegrass Cellular or any other carrier, this disaggregation of support will not

³⁷ See *Joint Board Recommended Decision*, 12 FCC Rcd at 180.

³⁸ See *id.*

represent an undue administrative burden. The FCC placed that burden on rural ILECs in its *Fourteenth Report and Order* independent of service area redefinition and made no mention of this process being a factor in service area redefinition requests. To the extent those ILECs may find this process burdensome, the benefit of preventing cream-skimming and the importance of promoting competitive neutrality will outweigh any administrative burden involved.

In sum, the proposed redefinition fully satisfies both the Joint Board's recommendations and the *Virginia Cellular* analysis.

C. The Proposed Redefinition Along Wire-Center Boundaries Is Consistent With the FCC's "Minimum Geographic Area" Policy.

In its April 2004 *Highland Cellular* decision, the FCC declared that an entire rural ILEC wire center "is an appropriate minimum geographic area for ETC designation".⁴⁰ The FCC reiterated this finding in its *ETC Report and Order* earlier this year.⁴¹ As set forth in the attached KPSC Order, Bluegrass Cellular's designated ETC service area does not include any partial rural ILEC wire centers. Accordingly, the instant request for concurrence with redefinition to the wire-center level, and not below the wire center, is consistent with FCC policy.

III. CONCLUSION

Bluegrass Cellular stands ready to provide reliable, high-quality telecommunications service to Kentucky's rural consumers by investing federal high-cost support in building, maintaining and upgrading wireless infrastructure throughout their licensed service territories, thereby providing facilities-based competition in many of those areas for the very first time. The KPSC has found that Bluegrass Cellular's use of high-cost support will increase the availability of additional services and increase investment in rural Kentucky and therefore serve the public

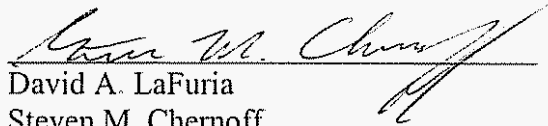
³⁹ See *id.*

⁴⁰ *Highland Cellular*, *supra*, 19 FCC Rcd at 6438.

interest. Yet, without the FCC's concurrence with the rural ILEC service area redefinition proposed herein, Bluegrass Cellular will not be able to bring those benefits to consumers in many areas in which they are authorized by the FCC to provide service. The redefinition requested in this Petition will enable Bluegrass Cellular's ETC designation to take effect throughout its licensed service territory in Kentucky.

The relief proposed herein is exactly the same in all material respects as that granted by the FCC and state commissions to numerous other carriers throughout the country, and the FCC is well within its authority to grant its prompt concurrence. Bluegrass Cellular submits that the benefits of permitting its ETC designation to take effect throughout its proposed service area are substantial, and those benefits will inure to rural consumers who desire Bluegrass Cellular's service, particularly those consumers who are eligible for Lifeline and Link-Up benefits and currently have no choice of service provider. Accordingly, Bluegrass Cellular requests that the Commission grant its concurrence with the KPSC's decision to redefine the rural ILEC service areas so that each of the wire centers listed in Appendix A hereto constitutes a separate service area.

Respectfully submitted,


David A. LaFuria
Steven M. Chernoff
Lukas Nace Gutierrez & Sachs, Chartered
1650 Tysons Boulevard
Suite 1500
McLean, VA 22102

⁴¹ See *ETC Report and Order*, *supra*, 20 FCC Rcd at 6405.

Attorneys for:

BLUEGRASS WIRELESS LLC
KENTUCKY RSA #3 CELLULAR GENERAL PARTNERSHIP
KENTUCKY RSA #4 CELLULAR GENERAL PARTNERSHIP
CUMBERLAND CELLULAR PARTNERSHIP

November 10, 2005